

### **III. REMARKS**

The present Official Action rejects all of the originally filed claims on the basis of a number of prior art documents. In particular:

Claims 1, 3, 4, 22, 23 and 27 are rejected under 35 U.S.C. 102(e) as being anticipated by Kilkki et al. (WO 00/25483).

Claims 1, 2, 27, 29 - 31 and 36 are rejected under 35 U.S.C. 102(b) as being anticipated by Butler et al. (U.S. Patent No. 5,774,496).

Furthermore:

Claims 5 - 15, 17, 18, 28 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Butler et al. in view of Peisa et al. (U.S. Patent No. 6,850,540).

Claims 24 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kilkki et al. in view of Erjanne (U.S. Patent No. 6,490,271).

Claims 33 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Butler et al. in view of Luong (U.S. Patent No. 6,314, 105).

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Butler et al. in view of Peisa et al. and further in view of Kim (U.S. Patent Application No. 2005-0123427).

Claims 19 - 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Butler et al in view of Peisa et al. and further in view of Luong.

Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable in view of Butler et al. in view of Peisa and further in view of Erjanne.

In response to the Official Action, the Applicant has amended the claims as shown above. In particular, independent claim 1 has been amended to read as follows:

1. A method of determining a bit rate of information transmitted from a first communication device to second communication device, the first communication device comprising a protocol stack, the protocol stack comprising a protocol layer, the protocol layer providing a logical channel for transferring the transmitted information through said protocol layer, the method comprising:

- transferring the transmitted information through the protocol layer via said logical channel according to a chosen transport format, the transport format defining a predetermined transmission block size for transfer of said transmitted information via the logical channel, an amount of transmitted information equal to the transmission block size being transferred in a predetermined transmission time interval;
- determining, at the first communication device, a bit rate value representative of the bit rate in the logical channel on the basis of the chosen transport format; and

- *providing an indication of the determined bit rate value to one of an application program running on the first communication device and another protocol layer of the first communication device.*

The following argument is presented to overcome the grounds of rejection so as to obtain allowable subject matter in the claims.

**Anticipation:**

First considering the claim rejections under 35 U.S.C. 102(e) based on Kilkki et al. (WO 00/25483), it is the Applicant's opinion that Kilkki does not disclose the feature of:

*"transferring the transmitted information through the protocol layer via said logical channel according to a chosen transport format, the transport format defining a predetermined transmission block size for transfer of said transmitted information via the logical channel, an amount of transmitted information equal to the transmission block size being transferred in a predetermined transmission time interval".*

Similarly, Kilkki does not disclose:

*"determining, at the first communication device, a bit rate value representative of the bit rate in the logical channel on the basis of the chosen transport format".*

At least for these reasons, it is the Applicant's view that Kilkki cannot provide basis for rejection of the amended claims under 35 U.S.C. 102(e).

Considering now the claim rejections under 35 U.S.C. 102(b) based on Butler et al. (U.S. Patent No. 5,774,496), the Applicant would first point out that Butler relates to a determination of bit-rate applied to **received data, the determination being performed at the receiving device**. Because independent claims 1 and 29 (and their respective dependent claims) concern determination of bit-rate applied to **transmitted data, the determination being performed at the transmitting device**, the Applicant respectfully considers that Butler's teachings relating to bit-rate determination are not at all relevant to the aforementioned claims, since the technical issues relating to the determination of bit-rate differ depending on whether the measurement is applied to transmitted or received information and depending on where the measurements are made. The claim language has been amended to clarify this distinction.

In addition, Butler does not disclose the feature of:

*"transferring the transmitted information through the protocol layer via said logical channel according to a chosen transport format, the transport format defining a predetermined transmission block size for transfer of said transmitted information via the logical channel, an amount of transmitted information equal to the transmission block size being transferred in a predetermined transmission time interval".*

Furthermore, Butler does not disclose:

*"determining, at the first communication device, a bit rate value representative of the bit rate in the logical channel on the basis of the chosen transport format".*

Neither does Butler disclose the feature of:

*"providing an indication of the determined bit rate value to one of an application program running on the first communication device and another protocol layer of the first communication device".*

At least for these reasons, it is the Applicant's view that the teachings of Butler et al. cannot provide a basis for rejecting the amended claim under 35 U.S.C. 102(b).

**Obviousness:**

The independent claims have been amended to incorporate subject matter from a number of the originally filed claims with appropriate amendment to the precise wording to ensure consistent and clear use of language throughout the claims. Various ones of the dependent claims have been canceled in view of the inclusion of their subject matter in an independent claim.

In particular the clause:

*"transferring the transmitted information through the protocol layer via said logical channel according to a chosen transport format, the transport format defining a predetermined transmission block size for transfer of said transmitted information via the logical channel, an amount of transmitted information equal to the transmission block size being transferred in a predetermined transmission time interval"* contains subject matter presented in original claim 10 relating to the transport block size and transmission time interval defined by a transport format.

The clause:

"determining, at the first communication device, a bit rate value representative of the bit rate in the logical channel on the basis of the chosen transport format" contains subject matter from claim 5 relating to making a determination of bit-rate on the basis of a chosen transport format.

The final clause of the claim:

"providing an indication of the determined bit rate value to one of an application program running on the first communication device and another protocol layer of the first communication device" contains subject matter from original claims 22 and 24.

As demonstrated above, the independent claims as amended contain features that cannot be found from Kilkki and Butler and are therefore novel. It is the Applicant's view that the independent claims are also inventive (non-obvious) with respect to Kilkki and Butler as well as any other combination of the prior art documents cited in the present Official Action.

Concerning the feature of the independent claims derived from claim 22 (*providing an indication of the determined bit rate to an application program running on the first communication device*), this claim was originally rejected under 35 U.S.C. 102(e) as being anticipated by Kilkki. However, the Applicant would point out that in Kilkki the bit rate measurement MBR is provided to a function that determines a priority value for a packet to be transmitted. This operation is a part of the built-in packet scheduling functionality of the transmission protocol and not an *"application program running on the first communication device"* as now claimed. Indeed, the bit-rate determination performed in Kilkki could be considered a sub-function of the packet priority value determination. Thus, there

is nothing in the provision of the MBR value for calculation of a packet priority value that would motivate a skilled person to make the calculated bit-rate value available to an application program running on the first communication device, the functionality of such an application being separate from, and unrelated to, the operation of the underlying transmission protocol.

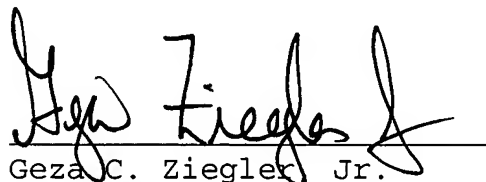
The feature of the newly amended independent claims derived from claim 24 (*providing an indication of the determined bit rate to another protocol layer of the first communication device*) was originally rejected under 35 U.S.C. 103(a) in view of the combination of Kilkki with Erjanne. In the section of the patent referenced by the Examiner (column 9, lines 18 - 47), Erjanne provides an overview of the various protocol layers in a GPRS radio interface. While Erjanne states broadly that a certain protocol layer "uses the services" of another protocol layer, there is no disclosure of passing calculated parameters between protocol layers in order for those parameters to be used at another protocol layer. The skilled person would understand Erjanne's teachings as a straightforward description of how data to be transmitted, or data which has been received, is passed from one protocol layer to another (either up or down the protocol stack) and how, at each level, particular operations, specific to that layer are performed on the data. It is therefore the Applicant's view that there is nothing in Erjanne that could be combined with the teachings of Kilkki to arrive at the claimed invention.

For all of the foregoing reasons, it is respectfully submitted that all of the claims now present in the application are clearly novel and patentable over the prior art of record, and

are in proper form for allowance. Accordingly, favorable reconsideration and allowance is respectfully requested. Should any unresolved issues remain, the Examiner is invited to call Applicants' attorney at the telephone number indicated below.

A check in the amount of \$1020.00 is enclosed for a three-month extension of time fee. The Commissioner is hereby authorized to charge payment for any fees associated with this communication or credit any over payment to Deposit Account No. 16-1350.

Respectfully submitted,



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